IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED
2005 JUN 24 P 2:20
CLERK, US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ________
DEPUTY

RANDY ARROYO, Petitioner,	§	
	§	
v.	§	CIVIL ACTION NO. SA-01-CA-976-EP
	§	
DOUG DRETKE, Director, Texas Department of Criminal Justice, Correctional Institutions Division, Respondent.	§	

RESPONDENT DRETKE'S ADVISORY TO THE COURT

Petitioner Randy Arroyo ("Arroyo") was convicted and sentenced to die in Texas state court for the murder of United States Air Force Captain Jose Cobo. He filed a federal petition for writ of habeas corpus challenging his conviction and sentence in this Court pursuant to 28 U.S.C. §§ 2241 & 2254. In his petition, Arroyo claimed in part that his sentence of death violated the Eighth Amendment because he was seventeen years old at the time of the crime. While his petition was pending, the Supreme Court ruled in *Roper v. Simmons*, 125 S. Ct. 1183 (2005), that the Eighth and Fourteenth Amendments forbid the imposition of the death penalty on persons who were under the age of eighteen at the time their crimes were committed. On March 29, 2005, this Court conditionally granted Arroyo's Eighth Amendment claim and stated that "[t]he Court will issue a Writ of Habeas Corpus unless, within ninety days from the date the Judgment in this cause becomes final, the State of Texas grants Petitioner a new sentencing hearing ... or vacates Petitioner's death sentence and imposes a sentence less than death." Docket Entry 49 at 38. The Texas Board of Pardons and Paroles subsequently recommended that Arroyo's sentence be commuted to life imprisonment. On June 22, 2005, Governor Rick Perry accepted the Board's

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recommendation and issued a proclamation to that effect. *See* Attached Commutation Order. Consequently, Arroyo is no longer under a sentence of death, and the Director respectfully advises the Court that the instant proceeding is concluded.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

DON CLEMMER
Deputy Attorney General
for Criminal Justice

GENA BUNN
Assistant Attorney General
Chief, Postconviction Litigation Division

W. Erich Dryden

W. ERICH DRYDEN*
Assistant Attorney General
State Bar No. 24008786

P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 936-1400
(512) 320-8132 (Fax)

ATTORNEYS FOR RESPONDENT

*Attorney-in-Charge

CERTIFICATE OF SERVICE

I, W. Erich Dryden, Assistant Attorney General of Texas, do hereby certify that the above and foregoing Respondent Dretke's Advisory to the Court has been served by placing same in the United States mail, postage prepaid, on this the 23rd day of June, 2005, addressed to:

Anthony M. Smith
Riverwalk Law Offices
112 Villita Street
San Antonio, Texas 78205-2729

W. Erich Dryden

W. ERICH DRYDEN
Assistant Attorney General

STATE OF TEXAS

Proclamation

by the

Governor of the State of Texas

PROCLAMATION NO. 2005-00003 **DPS # 5635506**

TO ALL TO WHOM THESE PRESENTS MAY COME:

WHEREAS, RANDY ARROYO, TDCJ#999261, D.O.B. 10/31/1979, was sentenced in 226th District Court of Bexar County, Texas on March 6, 1998, to receive the sentence of Death for the offense of Capital Murder, Cause No. 97-CR-2457A;

AND WHEREAS, based on the opinion of the United States Supreme Court in Roper vs Simmons, and 543 U.S. ____ (2005) that RANDY ARROYO was seventeen (17) at the time he committed the offense of Capital Murder;

AND WHEREAS, the Board of Pardons and Paroles has recommended a Commutation to Life Imprisonment.

NOW, THEREFORE, I, RICK PERRY, Governor of the State of Texas, by virtue of the authority vested in me under the Constitution and laws of this State, and acting upon the recommendation of the Texas Board of Pardons and Paroles, do hereby grant unto the said RANDY ARROYO

A COMMUTATION OF SENTENCE TO IMPRISONMENT FOR LIFE FOR THE OFFENSE ABOVE SET OUT IN CAUSE NO. 97-CR-2457A, 226th DISTRICT COURT, BEXAR COUNTY, TEXAS.

I HEREBY DIRECT that a copy of this proclamation be filed in the office of the Secretary of State.

By the Governor

IN TESTIMONY WHEREOF, I have heretofore signed my name and caused the Seal of the State of Texas to be impressed hereon, this the 22nd day of June, 2005.

Rick Perry
Governor

ATTEST:

Secretary of State